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RECEIVED

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October 17, 2002

TN REGULATORY AUTHORITY
DOCKET ROOM

VIA HAND DELIVERY

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Declare Switching an Unrestricted Unbundled Network Element*
Docket No. 02-00207

Dear Chairman Kyle:

Enclosed herein for filing, please find the original and fourteen copies of BellSouth's response to the October 17, 2002 letter from counsel for the UNE-P Coalition to Hearing Officer Ron Jones. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JP/ps

Enclosure

cc: The Honorable Ron Jones, Hearing Officer

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Hon. Ron Jones, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case
Proceeding to Declare Switching an Unrestricted Unbundled Network
Element*
Docket No. 02-00207

Dear Director Jones:

Once again BellSouth feels compelled to respond to the correspondence dated October 15, 2002 on behalf of the Petitioners in the above referenced docket.

Contrary to Petitioners' assertion, BellSouth is not "demanding" that Petitioners enter into a stipulation. Rather, it was BellSouth's understanding at the conclusion of the pre-hearing conference that the parties had been directed to attempt to reach a negotiated stipulation in order to avoid the need for non-party CLECs to respond to certain staff data requests.

The reason for reaching a negotiated stipulation as to facts, rather than proving facts, is to avoid the need to present testimony or other evidence on a particular factual issue, as to which the parties can agree. In this case it appeared at the pre-hearing conference that the parties, using information such as the Local Exchange Routing Guide (the "LERG"), might be able to agree as to the number of CLEC switches serving Nashville as well as other facts related to the market for local switching in Nashville. This would have obviated the need for non party CLECs to provide information relevant to those issues. In an attempt to negotiate a

mutually-acceptable stipulation, BellSouth has drawn the information relating to the number of CLEC switches from information found in the LERG, which is an industry-compiled document regarding which BellSouth does not necessarily have independent knowledge. Now it appears that Petitioners are not satisfied to agree as to the information in the LERG and will instead attempt to refute the number of switches that BellSouth has concluded serve Nashville. Consequently, if the Petitioners in this docket intend to challenge the number of CLEC switches that BellSouth has concluded exist (based on the LERG), then BellSouth should be entitled to review discovery from non-party CLECs in order to gather evidence to confirm the number of CLEC switches serving Nashville in the face of Petitioners' efforts to refute that contention. This is necessary to enable BellSouth to defend its contention about the number of switches serving Nashville. The Petitioners in this docket, on the one hand, refuse to reach or even try to negotiate a stipulation as to the number of CLEC switches serving Nashville while, on the other hand, they complain that BellSouth does not need to conduct discovery in order to be prepared at the hearing to present evidence in support of its contentions.

Petitioners urge that the LERG lists identify points to which traffic should be routed and that such points may or may not be conventional switches. Had this issue been directed to BellSouth, we would have addressed it. BellSouth has reviewed the information in the LERG in light of this concern, and, of the eighteen switches originally identified, BellSouth has identified fourteen conventional switches and four points, which may be data only routers. BellSouth would be willing to stipulate to fourteen, rather than eighteen switches, if that will address the concern raised in the footnote of the October 15 letter.

The Petitioners' contention that the coalition "cannot independently confirm or, without further discovery, closely examine" the proposed stipulation that CLECs have at least fourteen switches in Nashville including 5ESS and DMS500 switches is also unreasonable given that the coalition clearly has access to the LERG from which this information has been drawn, and that information includes information identifying the switch type. Petitioners clearly have access to the LERG. The LERG is available to all carriers who subscribe to it. In order to route traffic, a carrier must subscribe to the LERG in order to have information as to the appropriate manner in which to route such traffic. In short, the Petitioners are simply unwilling to rely on the LERG to reach a stipulation. It is clear from the October 15 letter that, if BellSouth tries to establish the number of switches at the

hearing using the LERG information, Petitioners' will argue that the number is wrong because they "cannot independently confirm" it. Accordingly, while BellSouth is amenable to reaching a stipulation based on this industry-compiled LERG, BellSouth is not willing to waive its opportunity to review third-party discovery if the Petitioners in this docket intend to challenge the LERG-based information on that issue at the hearing.

The October 15 letter also takes issue with the proposed stipulation regarding BellSouth's performance of hotcuts. The issue of hotcuts is among the issues on which the Petitioners in this docket sought discovery. The stipulation is based upon the evidence presented in the 271 docket and data collected for the purpose of demonstrating compliance with the service quality measurement related to timeliness of hot cuts.

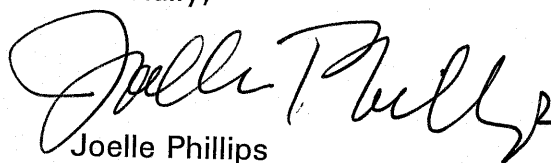
As Director Jones has observed during the course of the pre-hearing conference, it is clear that the Authority will need the information regarding the number of CLEC switches, as well as other information about the market for local switching, in order to conduct a proper analysis on this issue. The Authority could rely upon a stipulation regarding these facts, or the Authority could have the parties submit evidence and argument in order to determine, using the normal adversarial process of a contested case, what the actual facts about the market are. The Petitioners in this docket, however, do not seem prepared to proceed with either alternative. They refuse to negotiate with BellSouth regarding a stipulation that would avoid the need for discovery on these issues, *and* they contend that BellSouth should not be entitled to take and see discovery collected from third parties relating to the very facts at issue in order to use that evidence at the hearing.

The Petitioners continue to state in their most recent letter, as they have earlier, that they stand ready to discuss these matters further at a pre-hearing conference. The parties, however, were ordered to discuss these matters with one another in an attempt to reach a stipulation. The Petitioners' refusal to participate in negotiation to reach a stipulation appears to leave us where we were at the pre-hearing conference - namely, trying to find an appropriate way to gather and present evidence on the market for local switching in light of concerns raised by non-parties. By their refusal to participate in negotiation to reach a stipulation, the Petitioners have chosen not to be part of a resolution of the non-party concerns.

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October 17, 2002
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Instead, they continue to seek to capitalize on the third party concerns as to confidentiality by obstructing BellSouth's efforts to see that the Authority has all of the relevant information about the local switching market in order to rule in this docket.

Cordially,

A handwritten signature in cursive script, appearing to read "Joelle Phillips". The signature is fluid and stylized, with the first name "Joelle" and last name "Phillips" clearly distinguishable.

Joelle Phillips

JP/ps

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

☐ Hand
☐ Mail
☒ Facsimile
☐ Overnight
☐ Electronic

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